IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 23RD JULY 2007 / 1ST SRAVANA 1929

Crl.Rev.Pet.No. 105 of 2007(C)

CRA.272/2004 of SESSIONS COURT, PATHANAMTHITTA
CC.984/2003 of JUDL.MAGISTRATE OF FIRST CLASS COURT-I, PATHANAMTHITTA
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REVN. PETITIONER: APPELLANT/ACCUSED

ALEYAMMA MATHEW,
D/O.THRASSIAMMA PATHEN,
PROPRIETORS, PRATHIBA PRINTING AND BINDING WORKS,
KADACKAD, PANDALAM P.O.

BY ADV. SRI.PHILIP M.VARUGHESE

RESPONDENTS: RESPONDENT/COMPLAINANT
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1. **P.K.RAMAKRISHNAKURUP,**
   PAZHAYATTIL VADAKKETHIL, MUDIYOORKONAM,
   PANDALAM.

2. **STATE OF KERALA REPRESENTED BY THE**
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY ADV. SRI.S.P.ARAVINDAKSHAN PILLAY
SMT.N.SANTHA
SRI.K.A.BALAN
SRI.PETER JOSE CHRISTO
PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 23/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU, J.

CRL.R.P. NO. 105 of 2007

Dated this the 23rd day of July, 2007

ORDER

The revision petitioner who is the accused in C.C.No.984/2003 in the court of JFCM, Pathanamthitta, with respect to the offence under section 138 N.I.Act stands convicted and sentenced to imprisonment till the rising of the court and to pay a compensation of Rs.Four lakhs vide section 357(3) Cr.P.C and in default to undergo simple imprisonment for four months.

2. The case of the complainant is that the accused borrowed a sum of Rs. Four lakhs and towards discharge of the same, issued the impugned cheque which when presented got dishonoured for want of funds in the account of the accused. Lawyer notice was issued but no reply was received nor was the amount paid.

3. The evidence adduced in the matter consisted of the testimony of PW-1 and Exts.P1 to P4. The defence examined DW-1 and got marked Exts. D1 and D2.

4. PW-1, the complainant has testified with respect to the alleged transaction, issuance of the cheque, dishonour of the same and consequent issuance of the lawyer notice demanding payment.

He has proved Exts.P1 to P4, the documents that would establish the above aspects. It is pointed out by the counsel for the revision petitioner that Exts.D1 and D2 and the evidence of DW-1 in the cross examination showed that there was a civil suit instituted against the husband of the accused and the same was withdrawn as settled only on 28-6-2000. It is also pointed out that as per Ext.D2 copy of the complaint, it can be seen that the civil suit was instituted on 1-3-2000 and the date of the impugned cheque is dated 11-1-2000. Hence, according to the counsel, it is improbable that when husband of the accused is liable to pay a sum of Rs.3,70,000/- (original suit is for realization of Rs.3,70,000/-, the amount allegedly borrowed as per the promissory note), he would have lent another sum of Rs.4 lakhs to the wife. It is also contended that the evidence of DW-1, the independent witness to the transaction of the accused and her husband with the complainant has not been discredited.

5. I find that the fact that the civil suit has been settled on payment of the amount due which is established from the evidence of PW-1, and in answers brought out in the cross examination. The accused/revision petitioner could not explain

the circumstances as to why the instant criminal proceedings was also not settled along with it. It is pointed out that the sworn statement of the complainant in the instant case was recorded only on 3-8-2001. But I find that it is admitted and proved that lawyer notice dated 7-3-2000 vide Ext.P3 has been received by the accused. Hence, it cannot be contended that the accused was not aware of at least the impending criminal proceedings. It is also evident from the testimony of PW-1 that there was other transaction also in between the complainant and the husband of the accused and the accused. Hence, it cannot be held that the further lending to the wife when there was already an existing debt to the husband is improbable.

6. So far as the evidence of DW-1 is concerned, I find that there is nothing objective in nature therein to establish the fact that he was connected with the transaction apart from his oral testimony. It is brought out from the evidence of DW-1 that he was not a witness to the execution of the promissory note on the basis of which the civil suit has been filed. Hence, the evidence of the DW-1 cannot be relied on to improbablise the version of the complainant. I find that the evidence in this

matter has been considered in detail by both the courts below and hence the revisional court is not empowered to interfere in the above finding facts. The accused/revision petitioner is granted 6 months time to remit the amount of compensation. He shall appear before the JFCM, Pathanamthitta on 23-1-2008 to receive the sentence.

The Crl.R.P is disposed of accordingly.

K.R.UDAYABHANU,JUDGE.

Kvm/

K.R.UDAYABHANU, J.

CRL.R.P. NO.105 OF 2007.

ORDER

23-7-2007.